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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JOHN MICHAEL ISLEY,

11 Plaintiff,

Case No. C09-1800-RAJ-BAT

12 v.

13 DAVID OSTER, *et al.*,

REPORT AND RECOMMENDATION

14 Defendants.
15

16
17 INTRODUCTION AND SUMMARY CONCLUSION

18 This is a civil rights action brought under 42 U.S.C. § 1983. Plaintiff John Isley filed this
19 action while confined in the Snohomish County Jail in 2009. He alleges in his complaint that he
20 was housed in the segregation unit for a total of 44 days without just cause. He further alleges
21 that he was improperly denied outdoor recreation time while housed in segregation. Plaintiff
22 identifies the following defendants in this action: David Oster, Classification Supervisor at the
23 Snohomish County Jail; Terry Bloss, Classification Counselor at the Snohomish County Jail; and
24 Snohomish County Corrections Sergeant Moody.
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REPORT AND RECOMMENDATION
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1 Defendants now move for summary judgment pursuant to Rule 56 of the Federal Rules of
2 Civil Procedure. Plaintiff has filed no response to defendants' motion. This Court, having
3 reviewed defendants' motion, and the balance of the record, concludes that defendants' motion
4 for summary judgment should be granted and that plaintiff's complaint, and this action, should
5 be dismissed with prejudice.

6 BACKGROUND

7
8 On June 12, 2009, plaintiff was booked into the Snohomish County Jail (the "Jail") on a
9 warrant for failure to appear on a charge of Failure to Register as a Sex Offender. (*See* Dkt. No.
10 18 at 5.) Plaintiff was thereafter assigned to a high security living module based on the nature of
11 his charge, his criminal history, and his prior incarceration history. (Dkt. No. 17 at 6.) On June
12 21, 2009, plaintiff was moved to a different high security module after it was alleged that he had
13 slapped another inmate in the face. (*Id.*) Plaintiff was not disciplined for this incident, he was
14 merely moved to another, equivalent, housing module in order to keep him separate from the
15 other inmate. (*Id.*)

16
17 On October 16, 2009, it was reported to corrections staff that plaintiff had been
18 "threatening" and "strong-arming" one or more inmates in his living module. (*See* Dkt. No. 16
19 at 2; Dkt. No. 17 at 6.) As a result of these allegations, and previous alleged behavior by
20 plaintiff, plaintiff was moved to a maximum security living module. (*Id.*) On October 17, 2009,
21 a classification memorandum was sent to plaintiff advising him that he had been classified to
22 maximum security for reasons of safety and security. (Dkt. No. 17 at 6-7 and Ex. C.)

23
24 On October 20, 2009, the Jail classification committee reviewed plaintiff's classification
25 status and determined that his maximum security classification should be maintained for
26 purposes of Jail safety and security. (Dkt. No. 16 at 2; Dkt. No. 17 at 7.) The following day,

1 October 21, 2009, Classification Counselor Terry Bloss visited plaintiff to explain the change in
2 his classification. (Dkt. No. 16 at 3.) Plaintiff became agitated and claimed that the allegations
3 of “strong-arming” were lies. (*Id.*) When Bloss informed plaintiff that the classification
4 committee had reviewed, and agreed with, plaintiff’s re-classification, plaintiff screamed vulgar
5 insults and threats at Bloss. (*Id.*) Other inmates in the module during plaintiff’s outburst became
6 agitated and told plaintiff to stop yelling. (*Id.*) Plaintiff threatened the other inmates as well.
7 (*Id.*)

8
9 As a result of this incident, Christopher Bly, the Operations Captain at the Jail, issued a
10 memorandum advising plaintiff that he was being placed in administrative segregation for
11 reasons of safety and security based on behavior which included attempting to intimidate jail
12 staff and inciting other inmates. (Dkt. No. 18 at 5 and Ex. D.) Administrative segregation is a
13 non-disciplinary, maximum custody, status which provides restrictive isolation of an inmate and
14 is intended to ensure the safety of the inmate and others, as well as the security of the facility.
15 (See Dkt. No. 17 at 4-5 and Ex. B at 2, 5-6.) Administrative segregation may be imposed for
16 various reasons including chronic and/or ongoing behavioral problems such as threatening,
17 inciting, and strong-arming. (See *id.*, Ex. B at 5-6.)

18
19 On November 3, 2009, prior to a classification committee meeting at which plaintiff’s
20 status was to be reviewed, Bloss met with plaintiff again. (See Dkt. No. 16 at 3 and Dkt. No. 17
21 at 7.) During the meeting with Bloss, plaintiff told Bloss that his previous tirade against her was
22 justified and that she was wrong to walk away when he accused her of lying and called her
23 names. (Dkt. No. 16 at 3.) Bloss construed plaintiff’s comments as an attempt to manipulate her
24 into agreeing that he had not acted in a threatening manner during their previous encounter. (*Id.*)
25 The classification committee thereafter determined that plaintiff should remain on administrative
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1 segregation status for purposes of safety and security. (Dkt. No. 16 at 3-4.) The classification
2 committee subsequently reviewed plaintiff's administrative segregation status on a weekly basis
3 for a period of eight weeks and each time determined that plaintiff's segregation status should be
4 maintained. (*Id.* at 4.)

5 On January 5, 2010, Classification Supervisor David Oster and Jail Captain Finsen, met
6 with plaintiff to discuss his classification. (*See* Dkt. No. 17 at 8.) At that meeting, plaintiff
7 indicated his continued displeasure with his administrative segregation classification and Oster
8 and Finsen discussed their expectations of plaintiff were he to be re-classified to a less restrictive
9 status. (*Id.*) Plaintiff was subsequently re-classified to a less restrictive status after the
10 classification committee concluded that, in light of plaintiff's recent behavior, he no longer
11 presented a safety or security risk to Jail staff or to other inmates. (*Id.*) Plaintiff's classification
12 status was thereafter reviewed on a monthly basis. (*Id.*)

13 Plaintiff's conduct and demeanor improved only marginally following his release from
14 administrative segregation. (Dkt. No. 17 at 8-9.) However, plaintiff was never re-classified
15 again to administrative segregation prior to his April 6, 2010, release from the Jail into the
16 custody of the Washington Department of Corrections. (*Id.*)

17 DISCUSSION

18 Summary Judgment Standard

19 Summary judgment is proper only where "the pleadings, depositions, answers to
20 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
21 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter
22 of law." Fed.R.Civ.P. 56(c). The moving party has the burden of demonstrating the absence of a
23 genuine issue of material fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 257

1 (1986). Genuine disputes are those for which the evidence is such that a "reasonable jury could
2 return a verdict for the nonmoving party." *Id.* Material facts are those which might affect the
3 outcome of the suit under governing law. *Id.*

4 In response to a properly supported summary judgment motion, the nonmoving party
5 may not rest upon mere allegations or denials in the pleadings, but must set forth specific facts
6 demonstrating a genuine issue of fact for trial and produce evidence sufficient to establish the
7 existence of the elements essential to his case. *See* Fed. R. Civ. P. 56(e). A mere scintilla of
8 evidence is insufficient to create a factual dispute. *See Anderson*, 477 U.S. at 252. In ruling on a
9 motion for summary judgment, the court is required to draw all inferences in a light most
10 favorable to the nonmoving party. *Id.* at 248.

12 Section 1983 Standard

13 In order to sustain a cause of action under 42 U.S.C. §1983, a plaintiff must show (i) that
14 he suffered a violation of rights protected by the Constitution or created by federal statute, and
15 (ii) that the violation was proximately caused by a person acting under color of state law. *See*
16 *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The causation requirement of § 1983 is
17 satisfied only if a plaintiff demonstrates that a defendant did an affirmative act, participated in
18 another's affirmative act, or omitted to perform an act which he was legally required to do that
19 caused the deprivation complained of. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981)
20 (quoting *Johnson v. Duffy*, 588 F.2d 740, 743-44 (9th Cir. 1978)).
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23 Due Process

24 Plaintiff asserts in his complaint that that he was improperly classified to administrative
25 segregation from October 23, 2009 until December 6, 2009. (See Dkt. No. 5 at 3-4.) He claims
26 that he was never served with an infraction or incident report after being taken to secured

1 housing on October 15, 2009. (Dkt. No. 5 at 3.) He further claims that after he was advised by
2 Classification Counselor Bloss that he was being permanently re-classified to the 23 hour lock-
3 down unit, he attempted to argue that he was being punished, but Bloss simply turned and
4 walked away. (*Id.*) According to plaintiff, as Bloss turned away, he made comments about her
5 “lack of moral fiber” and her “poor parenting skills” and she then immediately had him placed in
6 the segregation unit. (*Id.*) Plaintiff appears to be of the belief that his placement in
7 administrative segregation constituted improper punishment. While plaintiff does not identify in
8 his complaint what constitutional right he believes was violated by his alleged improper
9 classification to administrative segregation, his claim appears to implicate his rights under the
10 Due Process Clause.

12 When a detainee challenges some aspect of his pretrial detention that is not alleged to
13 violate any express guarantee of the Constitution, the issue to be decided is the detainee’s right to
14 be free from punishment. *Bell v. Wolfish*, 441 U.S. 520, 533 (1979). As explained by the
15 Supreme Court in *Bell*, “under the Due Process Clause, a detainee may not be punished prior to
16 an adjudication of guilt in accordance with due process of law.” *Id.* at 535.

18 While the Due Process Clause protects pretrial detainees from punishment, not every
19 disability imposed during pretrial detention constitutes “punishment” in the constitutional sense.
20 *Id.* at 537. Thus, the test to be applied in determining whether particular restrictions and
21 conditions imposed as a result of pretrial detention amount to punishment in the constitutional
22 sense is whether there was an express intent to punish, or “whether an alternative purpose to
23 which [the restriction] may rationally be connected is assignable for it, and whether it appears
24 excessive in relation to the alternative purpose assigned [to it]. *Id.* at 538 (quoting *Kennedy v.*
25 *Mendoza-Martinez*, 372 U.S. 144, 168-169 (1963)).

1 The Supreme Court has recognized that “maintaining institutional security and preserving
2 internal order and discipline are essential goals that may require limitation or retraction of the
3 retained constitutional rights of both convicted prisoners and pretrial detainees.” *Bell v. Wolfish*,
4 441 U.S. at 546. The Supreme Court has further recognized that prison administrators “should
5 be accorded wide-ranging deference in the adoption and execution of policies and practices that
6 in their judgment are needed to preserve internal order and discipline and to maintain
7 institutional security.” *Id.* at 547.

9 Defendants argue in their motion for summary judgment that plaintiff’s constitutional
10 rights were not violated by his placement in administrative segregation. Defendants maintain
11 that plaintiff was classified to administrative segregation because of safety concerns associated
12 with his threatening and anti-social behavior and that the classification decision was justified and
13 reasonable.

14
15 Classification Counselor Bloss, in a declaration submitted in support of defendants’
16 summary judgment motion, describes the events which preceded plaintiff’s classification to
17 administrative segregation in October 2009. (*See* Dkt. No. 16.) Specifically, Bloss states that
18 when she met with plaintiff on October 21, 2009, to explain the change in his classification status
19 from high security to maximum security, plaintiff became agitated and claimed that the
20 allegations of “strong-arming” other inmates were “bullshit lies.” (*Id.* at 3.) When Bloss
21 informed plaintiff that the classification committee had reviewed, and agreed with, the re-
22 classification, plaintiff screamed insults at her calling her a “fucking cunt” and a “bitch liar” and
23 saying that she and her whole family were “liars.” (*Id.*) Plaintiff also threatened to run Bloss
24 over if he saw her on the streets. (*Id.*) According to Bloss, plaintiff’s outburst caused other
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1 inmates in the module to become agitated and frenzied and, when other inmates told plaintiff to
2 stop yelling, plaintiff threatened them as well. (Dkt. No. 16 at 3.)

3 As a result of this incident, Captain Christopher Bly approved plaintiff's placement in
4 administrative segregation and advised plaintiff of the reasons for this placement in a
5 memorandum issued on October 21, 2009. (See Dkt. No. 18 at 5 and Ex. D.) Captain Bly
6 identified safety and security, inciting, and attempting to intimidate as the reasons for the
7 administrative segregation placement. (*Id.*, Ex. D.)

8
9 While plaintiff suggests in his complaint that his re-classification to administrative
10 segregation status was a retaliatory action by Counselor Bloss, he offers no evidence to rebut
11 defendants' evidence that he was placed in administrative segregation only after engaging in
12 threatening and intimidating behavior and causing a significant disruption in his living module.
13 Plaintiff also fails to rebut defendants' evidence that he subsequently attempted to manipulate
14 Bloss into agreeing that the behavior which resulted in his segregation classification was not, in
15 fact, threatening.
16

17 The evidence in the record supports defendants' assertion that plaintiff was not classified
18 to administrative segregation, and maintained on segregation status, in order to punish or
19 retaliate against him, but, rather, to prevent violence at the Jail and to promote the safety and
20 security of Jail staff and inmates. As the record supports the conclusion that plaintiff's
21 classification to administrative segregation was reasonably related to a legitimate government
22 objective; *i.e.*, maintaining institutional security and preserving internal order and discipline,
23 defendants are entitled to summary judgment with respect to plaintiff's claim that he was placed
24 in administrative segregation without good cause.
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1 Plaintiff not only complains about his classification to administrative segregation, he also
2 complains that he was denied access to outside recreation during the time he was housed in the
3 administrative segregation module. In a declaration submitted in support of defendants'
4 summary judgment motion, Jail Operations Captain Christopher Bly explains that, pursuant to
5 Jail policy, inmates housed in administrative segregation are on 23 hour lockdown and are
6 allowed out of their cells on a rotating time schedule. (Dkt. No. 18 at 3.) Jail policy also
7 provides that inmates are allowed limited access to the outdoor recreation area, but excepts from
8 the outdoor recreation provision segregation inmates with documented safety and security issues.
9 (See Dkt. No. 18 at 3 and Ex. C at 2.)

11 According to Captain Bly, outdoor recreation time for administrative segregation inmates
12 is scheduled by the Jail custody deputy in charge of the administrative custody module. (Dkt.
13 No. 4.) Plaintiff asserts in his complaint that while in secured housing he had "asked every
14 officer for outside recreation time . . . and been refused by every single one." (Dkt. No. 5 at 3.)
15 He also asserts that, on one occasion, Sergeant Moody told him that inmates in segregation do
16 not get outdoor recreation. (*Id.*)

18 Defendants, in their motion papers, do not dispute plaintiff's assertion that he was not
19 provided access to outdoor recreation while housed in administrative segregation nor do they
20 offer any clear explanation as to why plaintiff's access to outside recreation was restricted. The
21 record certainly suggests that such a restriction, assuming it was imposed, was related to the
22 safety and security issues which resulted in plaintiff's administrative segregation placement in
23 the first instance. Regardless, however, plaintiff offers no evidence that any of the named
24 defendants was responsible for what plaintiff claims were repeated denials of his requests for
25 access to outside recreation, or that such denials, in the circumstances alleged, implicate federal

1 constitutional concerns. Accordingly, defendants are entitled to summary judgment with respect
2 to plaintiff's claim regarding access to outside recreation as well.

3 Strike Under § 1915(g)

4 Defendants have requested in their summary judgment motion that a strike be assessed
5 against plaintiff under 28 U.S.C. § 1915(g) because this action is frivolous and/or malicious.
6 While defendants have persuaded this Court that they are entitled to judgment as a matter of law
7 with respect to the claims asserted by plaintiff in his complaint, they have not persuaded this
8 Court that the instant action was clearly frivolous. Under these circumstances, this Court
9 concludes that assessment of a strike under § 1915(g) is not appropriate.
10

11 CONCLUSION

12 Based on the foregoing, this Court recommends that defendants' motion for summary
13 judgment be granted and that this action be dismissed with prejudice. This court further
14 recommends that no strike be assessed against plaintiff in this matter. A proposed order
15 accompanies this Report and Recommendation.
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17 DATED this 12th day of January, 2011.
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21 BRIAN A. TSUCHIDA
22 United States Magistrate Judge
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